1945 K Examined.

File No. S. Bel. 3/45

Legal DEPARTMENT
A BRANCH

Subject:— Suits: Belgaum

C.S. no. 320 of 1944.

Vinayakrao Balasaheb Inamdar
of Nerli ——————— Pltff

Vs.

The Provincial Government of Bombay;
Mrs. Laxmibai Shamrao Kalkundri;
and Mr. Shivputra Kolappa Latti. — Defts.

claim Rs. 236-4-0 for court fee.
Rs. 5,100/- for jurisdiction

F.A. 226 of 1948

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Belgaum Civil Suit No. 320 of 1944. 25

In this suit the plaintiff contends that S. No. 50 of the village of Nerli (Taluka Hukeri) is watan property of his family and therefore its alienation in 1900 by his father in favour of the father-in-law of defendant No. 2 is null and void after his father's death in 1908. In 1940 the plaintiff made an application to the Assistant Collector for setting aside the alienation under section 11 of the Bombay Hereditary Offices Act, 1874. The Assistant Collector granted the application but his order was set aside by the Collector in appeal who held that the plaintiff was not a watandar in respect of the suit land and was not therefore entitled to restoration of the land. Hence the suit. In the Peshwa's record the village of Nerli stood in the name of the Desai of Wantmuri as his watan property. In 1772-73 the village was transferred by a member of the Desai's family to an ancestor of the plaintiff and since then upto 1900 the plaintiff's family was in possession of the lands in the village. In 1900 the plaintiff's father sold the suit land to the father-in-law of the defendant No. 2. The plaintiff contends that his family had acquired an hereditary interest in the watan including the hereditary office to which it was appurtenant. This ~~calculation~~ contention is untenable. There is considerable documentary evidence to show that although the plaintiff's family acquired the watan property it did not acquire the hereditary office to which the property was attached and consequently the plaintiff is not a watandar under section 4 of the Act. The alienation of the suit land is therefore valid against him and he is not entitled to any relief. The suit is also barred under section 4 of the Revenue Jurisdiction Act and Article 14 of the Limitation Act. Defence may be sanctioned on the lines of the appended brief. The draft written statement may be approved. The W.S. is to be filed on 27-9-1945 and the Court may not grant any more adjournments. Hence the case is kept urgent

A.L.R. RR 7/9
L.A. Rec'd 12/9/45
R.D. 2
15-9-45

R.M. 6/9/45

W.O.R. to Secy. R.D.M.
dt. 14/9/45

37-2-45

Civil Judge (Senior Division)

In the Court of the [First Class Sub-Judge] Belgaum.

Special Jurisdiction Suit No.320 of 1944.

Vinayakrao Balasaheb Inamdar Nerli.....Plaintiff;

vs.

1.The Province of Bombay by Collector of Belgaum.
2.Laxmibai Bhratar Shamrao Vithal Kalkundri.
3.Shivaputra Kotrappa Latti. } ...Defendants.

Written Statement on behalf of the defendant No.1 (Province of Bombay) is as follows:-

1. The allegations in paragraph 2 of the plaint are incorrect and hence denied. It is true that the village of Nerli was acquired by the plaintiff's ancestors before the introduction of the British Government but the lands in the village are nevertheless not Watan property in the hands of the plaintiff and his ~~xxx~~ ansestors.

2. The allegations in paragraph 3 of the plaint are untrue and therefore denied. The suit land is not appurtenant to Mahali Jamedari service nor did the plaintiff or his ancestors acquire any interest in any hereditary office to which the suit land and other lands in the village are attached. The defendant submits that the plaintiff is not a watandar under section 4 of the Bombay Act III of 1874 in respect of the suit land and consequently he is not entitled to have the alienation of the suit land by his father declared null and void.

3. The order of the Collector is perfectly legal and correct. Plaintiff's contentions to the contrary in paragraph 5 of the plaint are denied.

4. The suit is barred under section 4(a) of the Bombay Revenue Jurisdiction Act, 1876.

5. The suit is also time-barred under Article 14 of the Limitation Act.

District Government Pleader, Belgaum.

I, the District Government Pleader, Belgaum, do hereby declare that what is stated in paragraphs 1 to 5 above is true according to the informati

received and believed to be true. This verification is made at on the day of September 1945.

District Government Pleader,
Belgaum.

Suits :

Belgaum.

For a declaration that the order of the Collector of Belgaum, dated the 8th June 1943, rejecting the plaintiff's claim to be watandar of the Paragana Watan land at Nerli (Taluka Hukeri), is illegal and *ultra vires* and for restoration of the suit land S. No. 50 from defendants Nos. 2 and 3.

S

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GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 6827.

Bombay Castle, 17th September 1945.

Letter from the Collector of Belgaum, No. LAW. 652, dated the 30th May 1945—

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.

Civil Suit No. 320 of 1944.

Vinayakrao Balasaheb Inamdar of Nerli ... ... Plaintiff;

versus

The Provincial Government of Bombay; Mrs. Laxmibai Shamrao Kalkundri; and Mr. Shivaputra Kotrappa Latti ... ... Defendants.

Claim—Rs. 236-4-0 for Court-fee.
Rs. 5,100 for Jurisdiction.

Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 343, dated the 11th June 1945—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Belgaum, No. 6826, dated the 17th September 1945—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original P. N. Moos

P. N. MOOS,
Secretary to Government.

G. R., No. 6827, L. D., dated 17th September 1945.

To

*The Revenue Department,
*The Commissioner, Southern Division,
*The Collector of Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).

*With a copy of the brief.

No. of 1945.

Copy forwarded for information and guidance to

Submitted after one
2. File in S. Bel - 1/45 (new file)

8/21

8/11

45 7

BELGAUM CIVIL SUIT No. 320 OF 1944.

Chronological Statement of Facts.

The suit is for a declaration that the order of the Collector of Belgaum, dated 8th June 1943, rejecting the plaintiff's claim to be watandar of the Pargana Watan land at Nerli (Taluka Hukeri), is illegal and *ultra vires* and for restoration of the suit land survey No. 50 from defendants Nos. 2 and 3.

2. The suit land survey No. 50 forms part of the Pargana Watan Inam of Nerli, which is shown at serial No. 6094 of the printed land alienation register in the name of the Desai of Wantmuri. The village of Nerli was acquired by the Desai of Wantmuri before the establishment of the Peshwa's rule and in 1772-73 it was granted by a member of the Desai family to Appaji Shamrao an ancestor of the plaintiff. (*Vide* Report of the Assistant Inam Commissioner, dated 27th March 1856). — p. 67 of file II.

3. On 24th May 1894, survey No. 50 along with certain other properties was mortgaged by Balasaheb Bhavanrao, the plaintiff's father to Vithal Ramchandra Kalkundri the father-in-law of defendant No. 2. On 9th March 1900, Balasaheb sold the suit land to the mortgagee for Rs. 1,000 and since then the family of the defendant No. 2 has been in possession of the land. — p. 33 of file I. / p. 45 do.

4. On 31st March 1940, the plaintiff submitted an application to the Assistant Collector. Therein, he contended *inter alia* that the suit land was held by his father as the Pargana Watan property of his family, that his father had died in 1908, that the alienation of the suit land by his father in favour of the father-in-law of defendant No. 2 who was a stranger to the watan family was null and void after his death in 1908 and that it should be so declared under section 11 of the Bombay Hereditary Offices Act of 1874 and possession should be restored to him. — p. 1 do.

5. On 15th June 1940, the defendant No. 2 filed a written statement by way of reply to the plaintiff's application. — p. 15 do.

6. On 17th September 1941, the Prant Officer decided that the defendant No. 2 being a stranger to the watan family was not entitled to hold the land after the death of the alienor. He accordingly directed that the land should be resumed and restored to plaintiff after removal of the standing crops. — p. 249 do.

7. On 17th November 1941, the defendant No. 2 made an appeal to the Collector. — p. 1 of file II.

8. On 8th June 1943, the Collector allowed the appeal and set aside the Prant Officer's order. On 4th October 1943, the plaintiff applied to the Commissioner, Southern Division, for setting aside the Collector's order but the application was summarily dismissed by the Commissioner on 19th October 1943. — p. 75 do. / p. 79 do.

9. Notice of the suit under section 80 of the Civil Procedure Code was received by the Collector on 31st March 1944. On 18th December 1944, the plaintiff filed the suit in the Court of Civil Judge, Senior Division, Belgaum.

Grounds of Defence.

Jurisdiction.—The suit involves a claim against the Crown relating to the property of an hereditary officer under Bombay Act III of 1874. The suit is, therefore, barred under the provisions of section 4 (*a*) of the Bombay Revenue Jurisdiction Act.

2. *Limitation.*—The order of the Collector which the plaintiff seeks to set aside was passed on 8th June 1943, while the suit is filed on 18th December 1944, i.e. more than fourteen months after the date of the order challenged. It is, therefore, timebarred under article 14 read with section 15 (2) of the Limitation Act. Limitation under that article commences from the date of the order itself and in computing the period under that article the time spent in prosecuting appeals before higher revenue authorities cannot be excluded. (Ganesh *v.* Secretary of State, I.L.R. 44 Bom. 451). Consequently the time taken in the appeal before the Commissioner cannot be excluded.

3. *Merits.*—The suit land forms part of the Pargana Watan Inam village of Nerli. From 1772–73 up to 1900 A.D, the plaintiff's family was in possession of the suit land. In the last mentioned year it was alienated for valuable consideration by the plaintiff's father to the father-in-law of defendant No. 2. The plaintiff contends that he is a watandar under section 4 of the Bombay Hereditary Offices Act, 1874 in respect of the suit land and hence after his father's death in 1908, the alienation in favour of the father-in-law of defendant No. 2 who was a stranger to the watan family became null and void. He, therefore, claims restoration of the land from defendant No. 2 and defendant No. 3 the latter being a tenant of defendant No. 2. Now a watandar means, under section 4 of the aforesaid Act, a person having an hereditary interest in the watan. It includes a person holding watan property acquired by him before the introduction of the British Government in the locality of the watan.....and a person holding such property from him by inheritance..... The same section defines watan property as the moveable or immoveable property held, acquired or assigned for providing remuneration for the performance of a duty appertaining to an hereditary office. In order to succeed the plaintiff must, therefore, show that he is a watandar in the sense that he or his ancestors acquired an hereditary interest in the watan property for the performance of an hereditary office. It is clear from the definitions given in section 4 that there can be no watan without an hereditary office. Therefore if a person merely acquires watan property without acquiring the office and without being under any obligation to perform the service attached to the office he is not a watandar within the meaning of section 4 and is not therefore entitled to restoration of the watan property from the alienee. (*See* Tarabai *v.* Murtacharya, 41 Bom. L. R. 924.)

4. It is true that the suit land is a part of Pargana Watan property. There is also no dispute that it was acquired by the plaintiff's family before the establishment of the British Goverment in the locality. The only question is whether the plaintiff is a watandar of this watan in the manner set out in paragraph 3 above. The plaintiff contends that he is such a watandar for the following reasons, viz. :—

(*a*) the village of Nerli was acquired by his ancestors prior to the introduction of the British Government in the locality of the watan (Plaint paragraph 2).

(*b*) Mahali Jamedari service is attached to this watan and the ancestors of the plaintiff acquired this watan with that office. (Plaint paragraph 3).

As regards (*a*) there is no doubt that the village of Nerli was acquired by the plaintiff's ancestors before the introduction of the British Rule in the locality of the watan, but that fact by itself does not constitute the plaintiff a watandar within the meaning of that term in section 4. The plaintiff apparently relies on the second part of the definition of watandar in section 4 and seems to contend that if the watan property was acquired before the introduction of the British Rule in the locality, the person acquiring it becomes a watandar even without acquiring the hereditary office attached to the watan. This contention is unsound in law and should be denied. An exactly similar argument advanced in Tarabai's case cited above was rejected by the High Court. At page 328 of the report Beaumont, C. J. observes "The primary definition of a watandar is that he is a person having an hereditary interest in the watan, that is the office and the property if any. The subsequent words..... are merely explanatory of the primary definition and do not curtail it. In my opinion the definition amounts to this that watandar means a person having a hereditary interest in the watan, i.e., the hereditary office and the property attached thereto, and includes, so far as watan property is concerned a person holding watan property acquired in the manner set out in the definition. But, in my opinion, a person who merely acquires watan property without acquiring the office is not a watandar." There is, therefore, no substance in the

argument that mere acquisition of the watan property before the introduction of the British Rule constituted the plaintiff a watandar of the same watan.

5. It is further contended by the plaintiff that the watan property is appertenant to the hereditary office of the Mahali Jamedari which was also acquired by the plaintiff's ancestors along with the property. In support of this contention the plaintiff might possibly rely on the following documents viz. :—

(*a*) the Jamabandhi Chitta of 1865,

(*b*) letter of 1861 from the 3rd Assistant Collector to Bhavanrao Abasaheb Mutalik Desai regarding payment of arrears of a clerk working in the office of the Mamlatdar of Chikodi on behalf of the Mutalik Desai,

(*c*) letter of 1862 from the Extra Aval Karkun regarding payment of arrears of pay of the clerk of the Mutalik Desai working in the mahal office.

It is not clear how any of these documents can help the plaintiff to prove this contention. An English translation of the Jamabandi Chitta will be found at page 233 of file I. It states *inter alia* that the village of Nerli, being Maha Jamadari Pargana Watan should be continued to the Inamdar Rudro Appaji, Bhavanrao Abaji Mutalik Desai and Raghunathrao Anant Mutalik Desai permanently as *sarva inam* subject to the rights of the (Kadim) Hakdar Inamdars. It does not conclusively show that the plaintiff or his ancestors ever performed the Mahali Jamedari service. Similarly, there is nothing in the two letters referred to above to show that the Mahali Jamedari service mentioned therein was in respect of the Wantmuri Deshghat Watan acquired by the plaintiff's ancestor in 1772–73. On the other hand there is considerable documentary evidence to show that the plaintiff's ancestors had acquired the watan property without at the same time acquiring any hereditary interest in the hereditary office to which it was appertenant and that therefore it was not watan property in the hands of the plaintiff's family. The earliest document in this connection appears to be the report of the Assistant Inam Commissioner, dated 27th March 1856. The claimant before the Inam Commission was Bhawanrao Abajirao the grand-father of the present plaintiff. It is important to note that the claim was for the entire village of Nerli as *surva inam* and not as a Mahali Jamedari Watan as is now claimed by the present plaintiff. There are two other contemporary documents on record which prove conclusively that the village of Nerli, which was acquired by the plaintiff's family from the Wantmuri Desai was treated by them as their *surva inam* and not as a service watan. The first is the statement made before the Inam Commissioner on behalf of the claimant Bhawanrao. The certified copy of that statement in Marathi will be found at pages 23–27 of file I. There is an English translation of it at page 9 of the papers accompanying the Collector's report. The first three paragraphs of this statement contain an unequivocal admission by the plaintiff's predecessor that these villages were not watan but inam villages and were not intended to be a remuneration for the performance of any service. The second document is a *takta* or a list given with the statement showing the inam villages *except* the Mahali Jamedari Watans in the name of Bhawanrao. The list includes two villages viz., Awargole and Nerli and in the third column both are described as *darobast gaon surva inam*. The fourth column contains a recital that the village of Nerli was acquired before the rule of the Peshwas by the Wantmurikar Desai whose descendant Basav Prabhu Lakhamgouda Desai granted it in inam to Appaji Shamrao the ancestor of the plaintiff. It will be seen from the Assistant Inam Commissioner's report that a counter claim had been made against Bhawanrao by Desai Wantmurikar not only in respect of the village of Nerli but also in respect of two other villages viz., Awargole and Amangi. The Desai's contention before the Inam Commission was that those villages were held by the Mutalik Desai under false pretexts

p. 67 of file II.

p. 29 do.

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and that the village of Nerli was never granted in inam by the Wantmurikar Desai to the Mutaliks. The Assistant Inam Commissioner decreed that since only the Desai's name was acknowledged in the Peshwa's records he alone had a claim *against* Government and that the village of Nerli should, therefore, be declared a part of the service holding of the Desai. As regards possession however the Desai was left to seek his remedy in the Civil Court if he felt inclined to sue the Mutaliks. The suit for possession of the villages of Nerli, Awargole and Amingi was eventually filed by Lukhamgauda Desai against Bhawanrao and others in 1861. It was dismissed on the ground that the plaintiff's ancestors had been in adverse possession of the villages for more than 30 years

*See the judgment at pp. 131-143 of file I.

6. This evidence, therefore, proves beyond doubt that the village of Nerli was not a service *watan inam* in the hands of the plaintiff's family. The admissions made by Bhawanrao before the Inam Commission are binding on the plaintiff and it is not now open to the plaintiff at this distance of time and nearly thirty-five years after his father's death to challenge the alienation and contend that the lands were service watan lands belonging to his family. The attention of the District Government Pleader is also invited to two other judgments in Gokak Civil Suit No. 199 of 1915 and Hukeri Civil Suit No. 79 of 1921. One of the issues in both the suits was whether the lands in the village of Nerli were watan property in the hands of the plaintiff's ancestors. The Courts answered this question in the negative on the ground that there could be no watan without an hereditary office. The suits were filed by the husband of defendant No. 2 against the plaintiff himself and others and the decrees therein are therefore binding on the plaintiff. The District Government Pleader may also refer to the case of Appaji Bapuji *v.* Keshav Shamrao, I.L.R. 15 Bom. p. 13. The dispute in that suit was in respect of lands in the villages of Amangi which was one of the three villages acquired by the Desai of Wantmuri but had passed in the possession of the plaintiff's family. The lands in dispute were sold in execution of a decree against one Rudro a member of another branch of the plaintiff's family. (*vide* Geneology at pp. 55-57 of file II). After Rudro's death his sons and grandsons filed the suit to recover the suit lands on the allegation that they were service watan lands and hence inalienable. This allegation was negatived by the High Court. The attention of the District Government Pleader is invited to the observations of Sargent C. J. at pp. 20 and 21 of the report. The judgment is useful to show that the lands which the plaintiff's family acquired from the Desai of Wantmuri were not treated by them as service watan lands but as *surva inam* and that any service which they rendered was on account of other lands which they held as their Mutalik Desai Watan. The Collector was, therefore, right in holding that the Mahali Jamedari service referred to in the two letters on which the plaintiff relies was in respect of the Mutalik Desai Watan and not in respect of the Wantmuri Deshghat Watan The plaintiff is thus not a watandar in respect of the suit land and is consequently not entitled to restoration of the suit land which was alienated by his father for valuable consideration.

pp. 83 and 101 do.

7. It should, therefore, be urged that the suit fails and must be dismissed with costs.

8. The notice of the suit is not included in the papers. The District Government Pleader should obtain it from the Collector and see whether it is in accordance with the provisions of section 80 of the Civil Procedure Code.

Revd
Belgaum 1/45
9/11/45

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Received on - 8.8.1944.
Registered on - 15.8.1944.
Decided on -- 22.12.1945.
Duration

In the Court of the Joint Civil Judge,

Senior Division at Belgaum.

Regular Civil Suit No. 320 of 1944.

Pleaders.

Mr.C.D.Gumaste, 1. Vinayakrao Balasaheb Inamdar
Nerle, age 55, occupation agri.
Jaste Brahmin, of Berli, Taluka
Hukeri ... ... Plaintiff.

Mr.V.A.Mujumdar. 1.Province of Bombay by the Collector
of Belgaum.

M/S.S.V.Mahajan &2.Laxmibai W/O.Shamrao Kalkundrikar,
K.A.Joshi. age 40, caste Brahmin, Occ.House-Hold
affairs of Belgaum, Deshpande Galli.

Mr.M.H.Patil.
(later on absent.)3.Shivputra Kotreppa Latti of Nerli
Lingayat, age about 35 years. ... .. Defendants.

Claim Rs. 5100/- for Jurisdiction.
Rs. 236/4/- for court-fees.

J U D G M E N T.

The plaintiff sues for possession of land, Survey No. 50 of the village Nerli, situated in Hukeri Taluka, future mesne profits and costs, on the following allegations: The suit land is the Paragana Watan land belonging to the plaintfff. The village Nerli was acquired by the ancestors of the plaintiff prior to the introduction of the British rule into the locality in which the village is situated. The village is a Paragana Vatan village under section 4 of the Hereditary Officers Act. The plaintiff's father Balaji Bhavanrao sold the suit land in the year 1900 to [illegible] father-in-law of defendant No.2 for Rs.1000/-. The plaintiff's father died in 1908 and the alienation of the land became null and void. Mahali Jamedari service is attached to the

to the Vatan and Nerli village was acquired prior to the introduction of the British rule. The office of the Mahali Jamedari service attached to the Vatan was also acquired prior to the introduction of the British rule. The ancestors of the plaintiff acquired a hereditary interest in the Vatan and in the Paragana Vatan village of Nerli. The plaintiff is, therefore, a vatandar under Section 4 of the Bombay Hereditary Offices Act. The plaintiff got the suit land restored to him by the District Deputy Collector (Prant Officer) who held that the plaintiff was a Vatandar. That was on 17.9.1941. Defendant No. 2 appealed and the Collector set aside the Prant Officer's order treating the plaintiff as a non-Vatandar. This order of the Collector is against law and the weight of the evidence in the case. It is based on unwarranted assumptions. The Collector has ignored the probative force of the Inam Committee's decision. Having held the plaintiff's family to have been in enjoyment of the village of Nerli since 1872-1873, the Collector illegally assumed jurisdiction by holding that the village Nerli was not held by the family of the plaintiff as remimeration for the Mahali Jamedari service which was attached to the village Nerli. The Collector relied on a later entry in the Inam Register and not on the certified copy of the Jamabandi Chitha of the year 1885. The documentary evidence produced by the plaintiff has been ignored and much is made of the Government Resolution of 1894, which is not inter partes. That Government Resolution was based on general and equitable grounds and not on legal principles. The present aspect of the case was not before the authorities. The Government Resolution was not a certified copy to be relied upon. It was mistaken and untrue as the true state of affairs was not before the Court. Therefore the order of the Collector is illegal and ineffective and the Plaintiff is entitled to

possession of the suit land. The plaintiff's applica-
-tion to the Commissioner to set aside the Collector's order was summarily rejected. The Collector has failed to exercise his powers under Section 11 of the Here-
-ditary Offices Act and has therefore acted illegally. The plaintiff is prejudicially affected by the Collector's order. Hence this suit. Defendant No. 3 is in actual possession as tenant of defendant No. 2 Defendant No. 1 is also impleaded to avoid any technical defect in the frame of the suit. The cause of action arose on 8-6-1943 i.e., the date of the Collector's order. A notice was given under section 80 of the Civil Procedure Code and the period of two months is to be deducted in computing the period of limitation. The suit is thus in time

2. Defendant No.1, the Province of Bombay, vide Exh.27, has contended as follows:- It is true that the village of Nerli was acquired by plaintiff's ancestors before the introducton of British rule; but the lands in the village are nevertheless not Vatan property in the hands of the plaintiff and his ancestors. The suit land is not appurtenant to Mahali Jamadari service nor did the plaintiff or his ancestors acquire any interest in any hereditary office to which the suit land and other lands in the village are attached. The plaintiff is not a Vatandar under Section 4 of the Bombay Act III of 1874, in respect of the suit land and consequently he is not entitled to have the alienation declared null and void. The Collector's order is perfectly legal and correct. The plaintiff's contentions to the contrary are denied. The suit is barred under Section 4(a) of the Bombay Revenue Jurisdiction Act, 1876, and under Article 14 of the Indian Limitation Act.

3. Defendant No.2 by her written statement

contended as follows:- Since the date of the sale 9.3.1900, defendant no.2 and her predecessors have been in peaceful enjoyment of the suit property. Nerli village is not Paragana Vatan or the plaintiff's family, nor is the land in suit. It has been ~~xxx~~ so held by Civil and Revenue Courts on several occasions. The ancestors of the Plaintiff have represented to the public all along that it is a Sarva Inam of their family. Neither the village nor the suit land was ever granted to any member of the plaintfff's family by any Government. nor was any office granted. Nerli village and other villages formed a part of the Pargana Vatan of the Sardesai of Vantmuri. The Inam Commission decided that Nerli village was Pargana Vatan acquired by the ancestors of the Sardesai of Vantmuri and that as the village at the time of the inquiry before the Commission was in the possession of some of the members of the plaintiff's family. the Desai was allowed to bring a suit for the possession of the village. if he so chose. In the Inam commission Inquiry the plaintiff's ancestors represented that a separate Sanad should be given to them in respect of that village. But that contention was negatived and the village was entered as the Paragana Vatan property of the Sardesai of Vantmuri and a Sanad was issued to him. That decision is final and the plaintiff cannot be allowed to reagitate the same matter at this distance of time. As the plaintiff's family all along represented that the suit land is the private property of the family and as the defendant's family acted on that representation to their detriment, the plaintiff is now estopped from saying that the suit land is Vatan. It is not a fact that the plaintiff's ancestors acquired this village prior to the introduction of British Rule as Vatan nor was any office attached to it. It is not true that the plaintiff's ancestors performed

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any service of Mahali Jamedari attached to the alleged Vatan. Plaintiff's ancestors therefore never acquired any hereditary interest in the Paragana Vatan under Section 4 of the Vatan Act. It is therefore submitted that the present Plaintiff has no right to ask for possession as Vatandar. The Plaintiff is not the sole heir of his father. Plaintiffs father left four sons of whom Plaintiff is one. He cannot alone file such a suit. His brothers or their heirs are necessary parties. Deft. No. 3 being an annual tenant of defendant No.2 need not have been joined. The order of the Collector was quite sound in law. The suit is barred by the Revenue Jurisdiction Act. The cause of action arose on the death of plaintiff's father in 1908 when, according to the plaintiff, the alienation became null and void and plaintiff became entitled to possession. The suit, is, therefore, barred by limitation. The defendant No. 2 has become owner by adverse possession. Plaintiff brought a suit No. 445 of 1911 against defendant's husband for possession of the suit land. That suit has been dismissed. This suit is therefore barred under Section 11 and Order 2 Rule 2 Civil Procedure Code. After the purchase in 1900 defendant No.2's predecessors have at great cost improved the land and turned it into a garden land. The land is now worth several times more than the value stated by the plaintiff.

4. Defendant No. 3 by his written statement, exh.18, has contended that he is in possession as permanent tenant.

5. On these pleadings, the issues set down for preliminary decision, are, vide exh. 33, as follows:-

1. In the absence of any prayer for relief as

against defendant No.1, is defendant No.1 a necessary or a proper party ?

2. What is the date on which the cause of action arose ?

3. Is the suit barred under Article 14 of the Limitation Act ?

4. Is the suit as against defendants Nos. 2 and 3 within limitation ?

5. Is the suit barred under Section 4(a) of the Bombay Revenue Jurisdiction Act No. X of 1876 ?

6. Is this suit barred by Section 11 and Order II Rule 2 of the Civil Procedure Code as contended in para 13 of the written statement of the Defendant No. 2 ?

My findings are:-

1. No.
2. In 1908.
3. No.
4. No.
5. Yes.
6. Finding not necessary.

Reasons.

7. Issue no.1:- In para 7 of the plaint the plaintiff has alleged as follows: "Defendant No. 1 is also impleaded to avoid any technical defect in the frame of the suit". In caluse (a) of para 12 the prayer is that the suit property may be given into the possession of the plaintiff from defendants Nos. 2 and 3. What precedes this clause is only an argument and not a prayer. Those words are "The suit property being Paragana Vatan property OF THE PLAINTIFF UNDER Section 4 of the H.D.Act and

the order of the Collector was dated 8th June 1943, being illegal". That is not a prayer for any relief against defendant No.1. If those words were intended to mean that the plaintiff seeks a declaration of the illegality of that order as against Government, then he would have had to pay separate court fee on this prayer for -- declaration. In paragraph 10 it is not so stated. Therefore as the plaint is drafted, defendant No. 1 would neither be a necessary nor a proper party.

8. At the time of the hearing, the plaintiff made the application, exh.34, for permission to add a specific prayer in para 12 of the plaint as follows: "It may be declared that the plaintiff is the Vatandar under section 4 of the Vatan Act holding the Praganaa Vatan village Nerli in which the suit land is situated". That application has been opposed by the Government Pleader on the grounds that the amendment sought is barred by limitation so far as defendant No. 1 is concerned and that it changes the natureof the suit and it will have to be seen whether the notice given by the plaintiff under Section 8 0 Civil Procedure Code is in order in view of this amendment. Pleader for defendant No. 2 has also opposed the application on the same grounds. I think that the application should not be granted. In the view I have taken of the plaint paragraph 12 as worded, I think the amendment, if allowed, would deprive defendant no.1 of a right which has accrued to him by lapse of time It is conceded that a suit praying for the declaration sought to be introduced in the prayer clause by the amendment would be governed by Article 14 of the Indian Limitation Act and as more than one year has passed from the date of the Collector's order refusing to recognise Plaintiff as a Vatandar and to declare the alienation

null and void, at the date of this application for amendment a suit brought for a declaration that plaintiff is a Vatandar under Section 4 of the Vatan Act would be clearly barred. It was stated in argument by the plaintiff's pleader that this prayer is implicit in the present clause (a) of para 12 of the plaint and what is sought by exh.34 is merely a clarification of that implied prayer. If so, the amendment is unnecessary and it has been held under Order 6 rule 17 Civil Procedure Code that where the amendment is useless and of no substance, it should not be allowed.

9. That brings me to the consideration of issue No. 5 in this suit. If the plaint implies that the plaintiff wants a declaration that he is a Vatandar under Section 4 of the Vatan Act and holds Nerli village including the suit land as Vatan property and a declaration that the Collector's order to the contrary is illegal, or if the prayer sought to be added by exh.34 is added, this suit is clearly a suit which would come under the first and third paragraphs of Clause (a) of section 4 of the Bombay Revenue Jurisdiction Act X of 1876. See Basalingappagouda v. The Secretary of State for India, 28 Bombay Law Reporter 651, and the observations of His Lordship Fawcett J. in the unreported decision in Sagunappa Vs. Bhau, quoted with approval on page 655 of the report. The plaintiff's pleader has relied upon the decision of a Full Bench of our High Court in Dattatraya V. Tukaram, I.L.R. 45 Bombay 1141. It may be noted that the judgment in Basalingappagouda's case is subsequent to the Full Bench decision and the principal judgments in both the cases have been delivered by His Lordship Sir Norman Macleod, C.J. In the Full Bench case there was no prayer for a declaration that the plaintiff therein was a Vatandar. The case

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proceeded on the footing that the plaintiff was a Vatandar. The plaintiff in that case had not joined the Secretary of State as a defendant nor had he prayed for any relief in respect of any order of the Collector under the Hereditary Offices Act. The Full Bench decision is to the effect that "where a Vatandar applies to the Collector to declare that a particular alienation of Vatan property is null and void and the Collector refuses to make the order declaring the alienation null and void the party aggrieved can file a suit in a Civil Court against the alienee in respect of the alienation". It is, therefore, an authority for the proposition that in this case section 4(a) of the Bombay Revenue Jurisdiction Act will not bar this suit as against defendants Nos. 2 and 3. But it is not an authority for holding that where, as in this suit, the plaintiff joins the Province of Bombay as a party and prays for setting aside the Collector's order holding him to be a non-Vatandar on the ground that is is illegal and for declaring that he is a Vatandar under Section 4 of the Bombay Hereditary Offices Act, Section 4(a) of the Bombay Revenue Jurisdiction Act does not operate as a bar. The decision in Mallappa V. Tukko, 39 Bombay Law Reporter 288, which the plaintiff's pleader cited, does not support him on this point. Mr. Gumaste for the plaintiff has referred to the observations of His Lordship Broomfield J.on page 295 of the report. I do not think they afford any ground for holding that this suit praying for the relief expressed in exh.34 and stated to be implied in the plaint para 12(a) is not barred by Section4(a). All the authorities have been reviewed in Mallappa V.Tukko, and it was held that "A suit, whether between private parties or against Government which would have the effect of nullify

-ing an order made by the Collector is barred by Section 4(a)(3) of the Bombay Revenue Jurisdiction Act, assuming that the order is validly made and is not ultra vires under the Bombay Hereditary Offices Act,1874. A suit in which the relief sought does not affect the position of Government at all, for instance, where a person seeks a declaration of his status as a Vatandar with a view to approach the Revenue Authorities under Section 36(3) of the Bombay Hereditary Offices Act, 1874, is not a suit to set aside or avoid an order within the meaning of Section 4(a)(3) of the Bombay Revenue Jurisdiction Act, 1876. In such suits, Government is neither a n necessary nor a proper party. If, however, a declaration of status is sought, and a claim for possession of land is made in flat contravention of the orders of the revenue authorities, the suit certainly comes within the mischief of clause (3), assuming that the orders are not ultra vires." In this case the plaintiff has said in his plaintthat the Collector in his order treated the plaintiff as non-Vatandar and he sais that that decision is against law and the weight of evidence. See para 5 of the plaint. It is not alleged that the order of the Collector in holding the plaintiff to be a non-Vatandar was ultra vires of the Collector. It was the plaintiff who approached the Collector for this decision and order and the allegation in para 5 of the plaint that "The collector illegally assumed jurisdiction" is in the ~~xxxxxx~~ context to really means that the Collector with a mistaken view of the evidence and law. Therefore even according to the decision in Mallappa Vs.Tukko, this suit would be barred by Section 4(a) of the Bombay Revenue Jurisdiction Act. It is open to the plaintiff to ~~xxx~~

to pray simply for possession from defendants Nos. 2 and 3 on the ground that the alienation was null and void after the death of the alienor and Government would neither be a necessary nor a proper party to such a suit according to the decision in Mallappa Vs. Tukko. But the plaintiff in this case had deliberately chosen to make Government a party and by exh. 34 he seeks to expressly pray for a declaration of his status as Vatandar and say that such a prayer is implicit in his plaint. Therefore according to the decision in Mallappa v. Tukko, this suit certainly comes within the mischief of the clause (3) of Section 4(a) of the Bombay Revenue Jurisdiction Act.

10. Issue No.3 relating to the bar under Article No. 14 of the Limitation Act really does not arise for consideration. This suit has been filed exactly one year and two months from the date of the Collector's order. The plaintiff is entitled to the addition of two months which is the period under Section 80 of the Civil Proce-dure Code, vide section 15(2) of the Indian Limitation Act. Therefore, at the date on which the plaint was filed this suit is not barred under Article 14 of the Limitation Act.

11. Issues Nos. 3 and 4 may be considered together. According to the plaintiff's allegation in the plaint, the alienation became null and void on the death of his father in 1908. That is, therefore, the date on which the cause of action arose. Merely because the plaintiff applied to Revenue Officers in 1941 for -- exercising their powers under section 11 of the Bombay Hereditary Offices Act and on 8-6-1945 the Collector passed his order refusing to act under Sections 11 and 12, it would not follow that the cause of action arose on that day. In Tukka V. Ganu, 32 Bombay Law Reporter 1398, it has been held as follows, after a review of all the

previous cases on the points: "Adverse possession of Vatan lands for 12 years under a sale deed passed by a Vatandar bars the claim of the succeeding Vatandars to the lands. The Full Bench case of Radhabai V.Anantrao is not over-ruled by the Privy Council in Madhavrao Vaman Saundalgekar V. Raghunath Venkatesh Deshpande. A succeeding Vatandar derives his title as heir of the preceding Vatandar which is capable of being barred and extinguished by adverse possession' On page 1405, it is observed "But in the case of an absolute sale, we think the adverse possession begins ø to run from the death of the alienor, and if the succeeding Vatandar fails to take steps to recover possession within 12 years, he is barred". The plaintiff's pleader faintly argued, inspite of this express decision, that the defendants must show commencement of adverse possession by proving the plaintiff's knowledge thereof. It is difficult to understand that argument. Nevertheless the defence pleader has pointed out that the previous litigation in Civil Suit No.445 of 1911 to which he has referred in para 15 of the written statement, exh.22, went up to the High Court and the decision of the High Court therein is reported in Vinayakrao Balasaheb Inamdar ... Shamrao Vithal Kalkundri, 18 Bombay Law porter 708. Mr.Dumaste for the plaintiff has not denied the fact of this litigation between the present plaintiff and defendant No. 2's husband, who was the son of the alienee; nor the fact that that suit concerned this very suit land and other lands which were alleged to have been mortgaged by the plaintiff's father to the present defendant No.2's father-in-law i.e. the alienee in the present case. That suit was filed in 1911 and it is futile to argue that the plaintiff was not aware of the possession of the alienee or of the claim of the alienee to be the owner. I, therefore, hold that the cause of action arose

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1908 and that the suit is barred under article 144 of the Indian Limitation Act.

12. As regards issue No.6, I do not think it necessary to record a finding because I have not got be-fore me the plaint and the decree in the suit and it would not be proper to rely on the report in 18 Bombay Law Reporter 706 for ascertaining what the allega-tions in the plaint were. That is necessary in order to hold that the contention that the alienation of Survey No. 50 was null and void after the death of the alienor under Section 5 of the Vatan Act and therefore the right of redeeming that land was not extinguished might and ought to have been made in that suit. If the report in the Bombay Law Reporter be correct, and I see no reason to suppose that it is incorrect in material particulars, I think that such a contention was not urged and might and ought to have been made a ground of attack in that suit, and, if so, section 11 of the Civil Procedure Code would operate as a bar. Order II rule 2 of the Civil Procedure Code would not apply because I find from the report that the plaintiff had prayed for redemption of the suit land as well. However, as I have said, as I have not got before me the certified copies of the original documents necessary for deciding this suit, I do not record a finding.

13. The result is that the suit fails and has to be dismissed. As the defences of defendant No. 1 and defendant No. 2 are separate, I award them separate costs. Defendant No. 3 and his pleader were not present at the hearing. His contention that he is a permanent tenant is as against both the plaintiff and defendant No. 2 and it has not been found necessary to give a decision on that contention. I , therefore, do not award the costs of defendant No.3.

O R D E R.

14. Suit dismissed. Plaintiff do pay the costs of defendant No. 1 and defendant No. 2 in separate sets and do bear his own costs. Defendant No. 3 do bear his own costs.

Sd.D.R.Ugrankar.
Joint Civil Judge,Senior Division,
22nd December 1945.

17 25-65

Decree.

In the Court of the Joint Civil Judge,

Senior Division, Belgaum.

Regular Civil Suit No. 320 of 1944. Exh.No.38.

1. Vinayakrao Balasaheb Inamdar, Nerle, age about 55, occupation agriculture, caste Brahmin of Nerli, Tal. Hukeri ... ... Plaintiff.

Vs.

1. The Province of Bombay by the Collector of Belgaum.

2. Laxmibai W/O Shamrao Vithal Kalkundrikar, age about 40, caste Brahmin, Occ. House-hold work of Belgaum, Deshpande Galli.

3. Shivaputra Kotrappa Latti of Nerli, Lingayat, age about 35. ... ... Defendants.

Claim Rs. 236-4-0 for Court fee and

" 5100-0-0 for Jurisdiction.

Received on 8.8.1944.

Registered on 15.8.1944.

The plaintiff abovenamed states as follows:-

1. Description of the property:- S.No. 50 of the village Nerli situated in the Hukeri Taluka measuring acre 15 and 1 Guntha, assessment Rs.12, Judi Rs.2-4-0 is Pargana Watan land belonging to the plaintiff. Value Rs. 5100/-.

2. The property abovenamed is of the ownership of the plaintiff and is pargana watan land. The land is situated in the village Nerli which is a paragana watan village. The village Nerli is acquired by the ancestors of the plaintiff prior to the introduction of the British Regime into the locality in which the village is situated. The village Nerli, therefore, is a Paragana watan village under Section 4 of the Heriditary Offices' Act.

3. The land described in para 1 above was sold by one Balji Bhavanrao the father of the plaintiff to the father-in-law of the deft.no.2 in the year 1900 for Rs.1000/-.

The father of the plaintiff died in 1908 and the alienation of the land under dispute became null and void. The village Nerli in which the land is situated is the Paragana Watan village. Mahali Jamedari service is attached to the watan. The ancestors of the plaintiff have acquired this village prior to the introduction of the British Rule into the locality of the watan and also the office of the Mahali Jamedari service which is attached to the watan. Also the ancestors of the plaintiff acquired a heriditary interest in the watan; thus the ancestors of the plaintiff had acquired the property, profit and heriditaty interest in the paragana watan village Nerli. Under these circumstances, the plaintiff is a Watandar under Section 4 of the Heriditary Offices' Act.

4. The plaintiff got the land described above in para 1, restored to him by the Prant Officer, from the present defendants Nos. 2 and 3, who were holding the land unauthorisedly, who held the plaintiff to be Watandar under Section 4 of the heriditaty offices Act on 17.9.1.1941.

5. The defendant No.2 appealed against the order of the Prant Officer to the Collector, who set aside the order by treating the plaintiff in non-watandar under Section of the H.C. Act. This order of the Collector is against law and weight of the evidence in the case. The decision of the Collector is based on unwarranted assumptions. The Collector has ignored the probative force of the Inam Committee decision. Having held the plaintiff's family to be in the enjoyment of the village Nerli since 1772-73, which is admittedly a Paragana Watan village, the Collector's illegally assumed jurisdiction by holding that the village Nerli was not held by the family of the plaintiff as -- remuneration for the Mahali Jamedari service which was attached to the village Nerli. The Collector relied on a later entry in the Inam Register and not on the certified copy of the Jamabandi Chitha of 1885. The

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documentary evidence produced by the plaintiff has been ignored and much is made of the Government Resolution ~~Rs~~ of 1894, the G.R. is not inter parties. It was based on general and equitable grounds and not on legal principles. The present aspect of the case was not before the autho--rities. The G.R. was not a certified copy to be relied upon. It was mistaken and untrue as the true~~x~~ state of affairs was not before the Court. Therefore the order of the Coll ector is illegal and ineffective and the plaintiff is entitled to the possession of the land in suit.

5. The plaintiff applied to the Commissioner to set aside the order of the Collector on 4.10.1943 which was summarily rejected.

7. For the reasons stated in para 5 above, the Collector failed to exercise his powers conferred by Sec. 11 of the H.O.Act, illegally. The plaintiff is thus prejudicially affectedby the order of the Collector.Hence, the plaintiff is constrained to file this present suit for possession of the suit property, it being paragana watan property from defendants Nos. 2 and 3 who hold it un-autho--risedly. Deft. 3 is in actual possession as the tenant of the defendant No. 2 and ncll is also impleaded to avoid any technical defect in the frame of the suit. Deft.no.3 is impleaded in order that no objections may be raised at the time of delivery of the possession.

8. The cause of action for the suit arose on 8.6.1943 when the order of the Collector was passed.

9. The suit is in time. A notice to the Collector for the Province of Bombay has been given under Sec. 80 of the C.P.C. and the time of 2 months is to be deducted in computing the period of limitation.

10 The suit is valued for court fees at Rs.236-4-0 and for Jurisdiction Rs. 5100/- and is calculated as follows:-

7½	times the assessment Rs.12/-	= Rs.90-0-0.
15	" the net profit Rs. 9-12-0	= " 146-4-0
		236-4-0

11. The property being situated within the special Jurisdiction of this court and so this court is competent to try this suit.

12. The plaintiff prays:-

(a) that the suit property being paragana watan property of the plaintiff under Sec.4 of the H.C.Act and the order of the Collector dated 8th June 1943 being illegal the suit property may be given into the possession of the plaintiff from defendants Nos. 2 and 3.

(b) that the future mesne profits may be awarded from the defendants.

(c) that costs of the suit be awarded to the plaintiff from defendants

(d) permission to amend the plaint, if necessary may be granted.

(e) any other just and equitable relief that the Court ~~may deem~~ deems fit, may be granted.

13. The suit coming on this 22nd day of December 1945 before D.R.Ugrankar, Esq., Jt. Civil Judge, S.D., Belgaum, for final disposal in the presence of Mr. C.D.Gumaste Pleader for the plaintiff and Mr.V.A.Mujumdar Pleader for Deft. No.1 and Messrs. S.V.Mahajan and K.A.Moshi Pleaders for Defendant~~s~~ No. 2 and Mr.M.H.Patil, Pleader for Defendant No. 3, it is hereby ordered that suit -- dismissed. Plaintiff do pay the costs of defendant No.1 and defendant No. 2 in separate sets and do bear his own costs. Defendant No.3 do bear his own costs.

Appl. 13/2/46 29/9

Bill of costs.

	Plaintiff.	Deft.No.1	Deft.No.2.
	Rs.As.Ps.	Rs.As.Ps.	Rs.As.Ps.
Stamp for plaint.....	22-8-0	0-0-0	0-0-0
-do- for Power.	0-10-0	0-10-0	1-4-0
-do- for Exhibits.....	4-6-0	3-2-0	2-8-0
			192-0-0
Pleaders Fees on Rs.5100/-	192-0-0	192-0-0	192-0-0
Witness Potagi.,,.....	0-0-0	0-0-0	0-0-0
Process Fees.	15-12-0	0-0-0	0-0-0
Copying fees.	2-14-3	0-0-0	0-0-0
	238-2-3	195-12-0	387-12-0
Rejected Costs.			
On plaint.	0-0-0	0-0-0	0-0-0
On pleader fees.	0-0-0	0-0-0	0-0-0
On process fees.	0-0-0	0-0-0	0-0-0
On Exhibits.	3-12-0	2-8-0	2-8-0
	3-12-0	2-8-0	2-8-0
Balance	234-6-3	193-4-0	385-4-0

Given under my hand and the seal of the Court, this 22nd day of December 1945.

Sd.S.G.Kulkarni.
Clerk.

Sd.Jt.C.J.,S.D.Belgaum.

Sd.C.D.Gumaste
Pleader for Plff.

Sd.V.A.Mujumdar.
Pleader for Deft.1
9.2.1946.

Sd.S.V.Majagan.
Pleader for Deft.2

Sd.M.H.Patil.
Pleader for Deft.3.

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A Suits.

Belgaum.

For a declaration that the order of the Collector of Belgaum, dated the 8th June 1943, rejecting the plaintiff's claim to be watandar of the Paragana Watan land at Nerli (Taluka Mukeri), is illegal and ultra vires and for restoration of the suit land S. N. 50 from defendants Nos. 2 and 3.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 1655
Bombay Castle, 27th February 1946.

§ Read Government Resolution, Legal Department, No. 6827 dated the 17th September 1945.

Endorsement from the District Government Pleader, Belgaum

B In the Court of the Civil Judge (Senior Division), Belgaum.
Civil Suit No. 320 of 1944.
Vinayakrao Balasaheb Inamdar of Nerli..Plaintiff
versus
The Provincial Government of Bombay;
Mrs. Laxmibai Shamrao Kalkundri; and
Mr. Shivaputra Kotrappa Latti .... Defendants.

Claim - Rs. 236-4-0 for Court-fee
Rs- 5,100 for Jurisdiction.

No. O. S. 320/44 dated the 9th

forwarding a copy of his letter No. O.S. 320/1944 dated the 9th February 1946 to the Coll. of Belgaum

February 1946, stating that the suit noted in the margin was decided by the Joint Civil Judge (Senior Division) Belgaum, on 22nd December 1945, when the following order was passed

"Suit dismissed. Plaintiff do pay the costs of defendant No. 1 and defendant No. 2 in separate sets and do bear his own costs. Defendant No. 3 do bear his own costs."; and forwarding uncertified copies of the judgment and decree.

RESOLUTION :- The result of the suit is recorded.

By order of the Governor of Bombay,

Original.

R. M. Mehta.

Assistant Secretary to Government.

To

The Revenue Department;
The Commissioner, Southern Division.
The Collector of Belgaum.

Submitted for signature orders at p. 2 ante
K.P. 27/2
A.S. 27/2

1/2

Submitted afternoon.
File in S. Bel 3/45-

D: 28/2

A 8.

S. Bel 3/45-
1/3

33

In His Majesty's High Court of Judicature at Bombay.
First Appeal No.2326 of 1946.

From decree in suit No. 320 of 1944 of the court of the joint Civil Judge, Belgaum.

Vinayakrao Balasaheb Inamdar Nerle of Nerle, taluka Hukeri --
--Appellant. Original plaintiff.

Vs.

1. The Province of Bombay by the Collector of Belgaum.
2. Laxmibai w/o Shamrao Vithal Kulkundrikar Deshpande Galli, Bgm.
3. Shivaputra Kotrappa Datti of Nerli -- Respondents : original defendants.

Claim Rs.236-4-0 for court fees.
Rs. 5100/- for jurisdiction.

The learned Joint Civil Judge of Belgaum decided suit No. 320 of 1944. Being aggrieved the appellant begs to appeal on the following grounds amongst others.

2. Para 7 and para 12 clause (a) of the plaint distinctly showed that plaintiff challenged the other as being illegal and ultra vires and from that point of view the first part of para 12(a) should have been read as a claim for relief. It was an error to hold that it was merely an argument and not a prayer. It was clear from the w.cs. of Govt. that the plaint was read as claiming a declaration.

2. Under the circumstances the amendment sought ought to have been allowed.

3. It was an error in law to hold that the amendment sought to be made being a clarification was unnecessary and so it ought not to have been allowed.

4. It was an error to hold that the amendment sought to have been made was barred by limitation.

5. The learned judge ought to have allowed the Government pleader to refer to the notice which on inspection and production would have clearly shown that a relief by way of declaration was sought and it was merely an omission in the plaint as filed. The application Ex. 34 clearly sets out that fact.

6. It was an error to hold that the prayer for declaration sought to be introduced was barred by act 14 of the Limitation Act.

7. It was an error to hold that the suit came within the mischie

mischief of clause 3 of sec. 4 of the Revenue Jurisdiction Act.

8. The lower court should have held that the suit was one to seek a declaration that he was a vatandar with a view to approach the Revenue authorities and was not a suit to set aside or avoid an order within 4(a) 3 of the Revenue Jurisdiction Act.

9. It was an error to hold that the observation in 39 Bom. L.R. 295 was not applicable.

10. It was also an error to hold that the Full Bench ruling in 45 Bom. was not applicable.

11. In case the property was held to be Vatan property cause of action accrued on the date of the Collector's order and not before and finding on issues 2 and 4 was not therefore material.

12. Assuming that defendant 1 was not a necessary party a suit for declaration that plaintiff was a Vatandar was in time as against ~~d~~defendants 2 and 3 at least.

13. The learned judge having held that it was not necessary to record a finding on issue he should not have discuss the issue and expressed any opinion on the point.

14. The learned judge ought to have allowed the plaintiff to adduce documentary evidence as asked for ~~him~~ and ought not to have decided the case on a preliminary point.

15. The Collector failed to exercise the jurisdiction vested in ~~him~~ under sec. 11 on a wrong view of law and therefore the decision was wrong.

16. The decree of the court below was wrong in law and ~~m~~opposed to the ruling of this Honourable Court as well as Privy Council.

Bombay, 17th June 1946.

Advocate for the appellant.

Suits.
Belgaum.

For a declaration that the order of the Collector of Belgaum, dated the 8th June 1943, rejecting the plaintiff's claim to be watandar of the Paragana Watan land at Nerli (Taluka Hukeri), is illegal and ultra vires and for restoration of the suit land S.N.50 from defendants Nos.2 & 3.

GOVERNMENT OF BOMBAY
Legal Department,
Resolution No. 1682
Bombay Castle, February 1947.

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Read Government Resolution, Legal Department, No.1555, dated the 27th February 1946.

Letter from the Collector of Belgaum No. L.A.W. 652, dated the 31st January 1947.- Forwarding a copy of the Notice and the Memorandum of Appeal No.226 of 1946, filed by the plaintiff in the suit noted in the margin in the High Court of Bombay, against the decision of the Joint Civil Judge (Senior Division) Belgaum, dated the 22nd December 1945 - and requesting sanction to its defence

Endorsement by the Commissioner, Southern Division, No.L.S.T.343, dated the 5th February 1947 - Forwarding the above with his concurrence.

In the Court of the Civil Judge (Senior Division), Belgaum.
Civil Suit No. 320 of 1944.

Vinayakrao Balasaheb Inamdar of Nerli - - Plaintiff;
Vs.
The Provincial Government of Bombay and Mrs. Laxmibai Shamrao Kalkundri; and Mr. Shivaputra Kotrappa Latti - - Defendants.

Claim:Rs.256-4-0 for Court fee
Rs.5,100 for Jurisdiction

RESOLUTION:- Sanction is accorded to the defence of the Civil Appeal No. 226 of 1946 in the High Court of Bombay on the lines of the brief accompanying Government Resolution, Legal Department, No. 6827, dated the 17th September 1945 and the favourable grounds contained in the judgment of the Joint Civil Judge, Senior Division Belgaum, dated the 22nd December 1945.

By order of the Governor of Bombay,

Subd. for signature
KBB
17/2

Original

R.M. Mehta

R.M. Mehta,
Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner, Southern Division,
The Collector of Belgaum,
The Government Pleader, High Court, Bombay.

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~~K. 521.~~ Rs.As.Ps. Ple. 5

Sectioner Mr. G.R. Desai. 0-10-0

K456 Examiner Mr.P.S.Joshi. }
Reader Mr. Pendharkar } 0-2-0
Paper chargee. 0-0-3
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Assistant Superintendent

Superintendent D.D.
23-11-1949

Appeal No. 226 of 1946 from Original Decree.

Abasahcb Vinayakrao Inamdar and
others, heirs of the deceased
Vinayakrao Balasahcb Inamdar ... ... Appellants.
(Heirs of Original plaintiff).

Versus

The Province of Bombay by the
Collector of Belgaum and others ... ... Respondents.
(Original defendants).

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

Appeal against the decision of D.R.Ugrankar Esquire, Joint Civil Judge (Senior Division) at Belgaum in Special Suit No. 320 of 1944.

Messrs. S.Y. Abhyankar and K.J. Abhyankar, Advocates for the appellants.

Mr. G.R. Madbhavi, Advocate for appellant No. 1(1).

The Additional Assistant Government Pleader for the Government Pleader for Respondent No. 1.

Mr. N.M. Hungund, Advocate for Respondent No. 2.

Coram :- Chagla C.J. and Gajendragadkar, J.

19th July 1949.

Oral Judgment : (Per Chagla C.J.) :-

This appeal arises out of a suit filed by the plaintiff for possession of S. No. 50 of Nerli Village which he claimed as being a watandar and entitled to that village as such. It would appear that in 1900 plaintiff's father who was a Watandar before him alienated the survey

number in suit to the father-in-law of defendant No. 2. Plaintiff's father died in 1908. On the 17th September 1941 at the instance of the plaintiff the Deputy Collector recognised the plaintiff as the watandar and restored possession of the survey No. 50 to him. On the 8th June 1943 the Collector reversed that order. Then the plaintiff came to the Civil Court for asserting his rights. The trial Court has held that the suit for possession is barred and it is obvious that that is so. Because the alienation made by the father of the plaintiff could endure only during his life time and on his death in 1908 the plaintiff became entitled to the possession of the alienated watan land and he has filed the suit only - 1944. Realising his difficulty the plaintiff then made an application to amend the plaint on the 17th December 1945 asking for a relief by means of a declaration that - he was the Watandar in respect of this land in suit. This application for amendment was refused by the learned Judge, and in our opinion rightly refused. In the first place as the order of the Collector was made on the 8th June 1943, on the date when this application was made, namely the 17th December 1945, the claim of the plaintiff for a declaration was barred by limitation. The other serious difficulty in the way of the plaintiff was that he was asking for a declaration in respect of an order made by a revenue authority and such a relief the Civil Court is not competent to grant in view of S 4 (a) of the Revenue Jurisdiction Act.

The result is the appeal must fail and is dismissed with costs.

By order of the Court.

Sd. S.H. Belavadi.

Deputy Registrar.

True Copy

for Deputy Registrar.

The 23rd day of November 1949

K.456 Sectioner Mr. G.R. Desai. RE.AS.+S. FIS. 10
Examiner Mr. V.Y. Gupte.) 1-4-0
Reader Mr. Vakharkar) 0-5-0
Paper charges. 0-0-6
Total 1-9-6

Rupee one annas nine and pice six only.

S. Mulherkar
Superintendent D.D.
18-10-1949

Copy applied for on 21-7-49
Copy ready on 18-10-49
Copy delivered on 12-12-49
sent by A. P. R. Regd. Post on

Assistant Superintendent

In the High Court of Judicature at Bombay.

Tuesday the 19th day of July 1949.

Appeal No. 226 of 1946 from Original Decree.

1. Abasahcb
2. Anant.
3. Bhavanibai w/o
} Vinayakrao Inamdar heirs of the deceased

Vinayakrao Balasahcb Inamdar ... ... Appellant
(Original plaintiff).

Amended vide Registrar's order dated 29-8-47 on C.A.650/47.

versus

The Province of Bombay by the Collector of Belgaum ;

2. Laxmibai w/o Shamrao Vithal Kalkundrikar

~~3. Shivaputra Kotrappa Latti~~ ... ... Respondents.
(Original defendants).

Name of respondent No. 3 struck off vide court's order dated 19-7-49.

Claim Rs. 236-4-0 for court fees.
Rs. 5100/ for jurisdiction.

The plaintiff sued for possession of land Survey No. 50 of Nerli village and to recover future mesne profits and costs.

The Original Suit No. 320 of 1944 was decided by the Joint Civil Judge Senior Division of Belgaum who dismissed it with costs.

An appeal has been admitted in the High Court from the decision of the lower court. Notice was ordered to issue by the Honourable Mr. Justice Bavdekar on the 23rd day of August 1946.

The grounds of objection to the decision appealed against are :-

1. Para 7 and para 12, clause (a) of the plaint distinctly showed that plaintiff challenged the order as being illegal and ultra vires and from that point of view the first part of para, 12(a) should have been read as a claim for relief. It was an error to hold that it was merely an argument and not a prayer. It was clear from the W.S. of Government that the plaint was read as claiming a declaration.

2. Under the circumstances the amendment sought ought to have been allowed.

3. It was an error in law to hold that the amendment sought to be made being a clarification was unnecessary and so it ought not to have been allowed.

4. It was an error to hold that the amendment sought to have been made was barred by limitation.

5. The learned Judge ought to have allowed the Government Pleader to refer to the notice which on inspection and production would have clearly shown that a relief by way of declaration was sought and it was merely an omission in the plaint as filed. The application, exhibit 34, clearly sets out that fact.

6. It was an error to hold that the prayer for declaration sought to be introduced was barred by section 14 of the Limitation Act.

7. It was an error to hold that the suit came within the mischief of clause 3 of section 4 of the Revenue Jurisdiction Act.

8. The lower court should have held that the suit was one to seek a declaration that he was a vatandar with a view to approach the revenue authorities and was not a suit to set aside or avoid an order within 4(a) 3 of the Revenue Jurisdiction Act.

9. It was an error to hold that the observation in 39 Bom. L.R. 295 was not applicable.

10. It was also an error to hold that the Full Bench ruling in 45 Bom. was not applicable.

11. In case the property was held to be vatan property cause of action accrued on the date of the Collector's order and not before and finding on issues Nos. 2 and 4 was not therefore material.

12. Assuming that defendant No. 1 was not a necessary party, a suit for declaration that plaintiff was a vatandar was in time as against defendants Nos. 2 and 3 at least.

13. The learned Judge having held that it was not necessary to record a finding on issue No. 6 he should not have discussed the issue and expressed any opinion on the point.

14. The learned Judge ought to have allowed the plaintiff to adduce documentary evidence as asked for and ought not to have decided the case on a preliminary point.

15. The Collector failed to exercise the jurisdiction vested in him under section 11 on a wrong view of law and, therefore, the decision was wrong.

16. The decree of the court below was wrong in law and opposed to the rulings of the Honourable Court as well as Privy Council.

HIGH COURT APPELLATE SIDE
CERTIFIED COPY
BOMBAY

Coram :- Chagla C.J. and Gajendragadkar, JJ.

For the reasons stated in the accompanying judgment, the Court confirms the decree of the lower court and dismisses the appeal with costs.

19th July 1949. Sd. S.H. Belavadi.
Deputy Registrar.

Bill of Costs in the High Court.

By the appellant.	Rs.As.Ps.
Stamps for Memorandum of Appeal.	22-8-0
Stamps for copies of decree and judgment.	1-14-0
Stamps for Vakalatnama.	7-8-0
Stamps for application to enter the names of the heirs of the deceased appellant.	5-0-0
Bhatta for process.	13-8-0
Sectioner's fee.	15-10-0
Advocate's fee. (Two Advocates fees)	384-0-0
Printing charges.	11-0-0
Copying charges for preparing paper books.	3-6-0
Stamp for affidavit.	0-10-0

Total Rs. 465-0-0

By respondent No. 1. Rs.As.Ps.

Stamps for Vakalatnama. (Govt. Pleader appears). 0-0-0

Advocate's fee. 192-0-0

Total 192-0-0

By respondent No. 2. Rs.As.Ps.

Stamps for Vakalatnama. 5-0-0

Advocate's fee. 192-0-0
Copying fee under rule 111 of the High Court Appellate Side Rules 1936. 6-6-0

Total 203-6-0

(Seal) Sd. S.H. Belavadi.
Deputy Registrar.

The 19th day of July 1949.

True Copy

for Deputy Registrar.

The 18th day of October 1949

Suits:
Belgaum.

HF 703

For a declaration that the order of the Collector of Belgaum, dated the 8th June 1943, rejecting the plaintiff's claim to be watandar of the paragana Watan land at Nerli (Taluka Hukeri), is illegal and ultra vires and for restoration of the suit land S.No.50 from defendants Nos.2 & 3.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 2046
Bombay Castle, 10th February 1950.

Read Government Resolution, Legal Department, No.1682 dated the 18th February 1947.

Letter from the Government Pleader, High Court, Bombay, No.4714, dated the 4th October 1949, stating that first appeal No.226 of 1946 in the suit noted in the margin was decided by the High Court, Bombay, on 19th July 1949, when the following order was passed :-

In the Court of the Civil Judge (Senior Division), Belgaum.

Civil Suit No.320 of 1944.

Vinayakrao Balasaheb Inamdar of Nerli. ....Plaintiff;
Vs.
The Provincial Government of Bombay.
Mrs.Laxmibai Shamrao Kalkundri; and
Mr.Shivaputra Kotrappa Latti. Defendants.

Claim Rs.236-4-0 for Court fee
Rs.5,100 for Jurisdiction.

" The Court confirms the decree of the lower court and dismisses the appeal with costs."

Letter from the Government Pleader, High Court, Bombay, No.6751, dated the 16th December 1949, forwarding certified copies of the judgment and decree.

RESOLUTION:- The result of the appeal is recorded.

By order of the Governor of Bombay,

original

R.M.MEHTA.
Assistant Secretary to Government.

Issued on 10/2

To
The Revenue Department,
The Commissioner, Southern Division,
The Collector of Belgaum.

Subbd to Sirgi

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4.2.50.

~~1944~~ 45

Subito sfollamento
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12/2

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5 Sel 3/45
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